



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP 22 2009

REPLY TO THE ATTENTION OF:

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Harry Pelman
Midwest Iron and Metal
6760 North Industrial Road
Milwaukee, WI 53223

Re: Midwest Iron and Metal, Milwaukee, Wisconsin

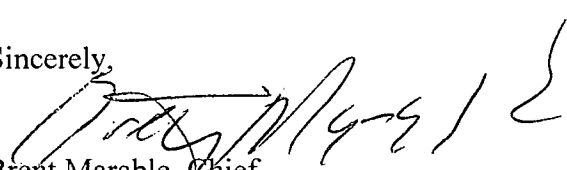
Dear Mr. Pelman,

Enclosed is the Administrative Consent Order (ACO) which resolves the Finding of Violation issued to Midwest Iron and Metal on February 25, 2009. Please retain this copy for your records.

The terms of this Order became effective on the date of signature by the Director, and are binding for two years from the effective date. Failure to comply with this Order may subject Midwest Iron and Metal to penalties of up to \$37,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

Should you have any questions, please contact Mr. Rich Clarizio, Associate Regional Counsel, at (312) 886-0559, or Ms. Natalie Topinka, of my staff, at (312) 886-3853.

Sincerely,


Brent Marable, Chief

Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosures: ACO

standard bcc's: official file copy w/ attachment(s)
 originating organization reading file w/attachment(s)

other bcc's: Richard Clarizio (C-14J)

Creation Date: September 22, 2009
File name: C:\Documents and Settings\ntopinka\Desktop\NTopinka\Cases\Midwest Iron & Metal, Inc\Midwest Iron & Metal ACO 7-31-09.doc
Legend: ARD:AECAB:AECAS: N. Topinka

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	EPA-5-09-113(a)-WI-04
)	
Midwest Iron and Metal)	Proceeding Under Sections 113(a)(3)
6760 North Industrial Road)	114(a)(1) of the Clean Air Act
Milwaukee, Wisconsin 53223)	42 U.S.C. § 7414(a)(1)
)	
_____)	

Administrative Consent Order

1. The Director of the Air and Radiation Division (“Director”), U.S. Environmental Protection Agency, Region 5 (“USEPA” or “EPA”), is entering into this Order with Midwest Iron and Metal, (“Midwest Iron and Metal”), 6760 North Industrial Road, Milwaukee, Wisconsin under Sections 113(a)(3) and 114(a)(1) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(3) and 7414(a)(1).

I. Statutory and Regulatory Background

2. Section 113(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7413(a)(3)(B), provides the Administrator of EPA with the authority to issue an Order requiring compliance with Title VI of the Clean Air Act. The Administrator of EPA has delegated her authority to the Regional Administrator of EPA, Region 5 pursuant to EPA Headquarters Delegation 7-6-A. The Regional Administrator of EPA, Region 5, has delegated his authority to the Director pursuant to EPA Region 5 Delegation 7-6-A.

3. Section 113(a)(3)(B)(4) of the Clean Air Act, 42 U.S.C. § 7413(a)(3)(B)(4), presents the requirements for issuance of this Order. EPA must provide the recipient of an Order with an opportunity to confer concerning the alleged

violations. The Order must state with reasonable specificity the nature of the violations and the time for compliance taking into consideration the seriousness of the violation and any good faith efforts to comply. The Order shall require compliance as expeditiously as practicable but in no event longer than one year after the date of issuance of the Order.

4. Title VI of the Clean Air Act, 42 U.S.C. § 7671, et seq. provides for the protection of stratospheric ozone. Section 608(c), 42 U.S.C. § 7671(c), prohibits the knowing venting of class I or II substances to the environment. Section 608(b) of the Clean Air, 42 U.S.C. § 7671g(b) provides EPA with the authority to regulate the safe disposal of class I and II substances. Class I and II substances include refrigerant containing chlorofluorocarbons (“CFCs”). In the May 14, 1993, Federal Register, 58 Fed. Reg. 28660, EPA promulgated such regulations covering the safe disposal of CFCs from small appliances and motor vehicles and ensuring that no person vents class I or II substances to the environment. The regulations are found in Subpart F of Part 82 of Title 40 of the Code of Federal Regulations, 40 C.F.R. Part 82, Subpart F.

5. Section 114(a)(1) of the Clean Air Act, 42 U.S.C. § 7414(a) authorizes the Administrator of EPA to require any person who owns or operates an emission source to make reports and provide information required by the Administrator. The Administrator of EPA has delegated her information gathering authority to the Regional Administrator of EPA, Region V pursuant to EPA Headquarters Delegation 7-8. The Regional Administrator of EPA, Region V, has delegated his information gathering authority to the Director pursuant to EPA Region V Delegation 7-8.

6. Effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to scrap recyclers) of small appliances and motor

vehicle air conditioner (“MVAC”) units must either recover the refrigerant in accordance with specific procedures or verify with signed statements that the refrigerant was properly recovered prior to receipt of the small appliance or MVAC unit. See 40 C.F.R. § 82.156(f). If verification statements are used then the suppliers of the small appliance or MVAC units must be notified of the need to properly recover the refrigerant. See 40 C.F.R. § 82.156(f)(3). Verification statements must be kept on-site for a minimum of three years. See 40 C.F.R. § 82.166(i) and (m). It is a violation of the regulations for someone to accept a signed verification statement if the person knew or had reasons to know that such signed statement is false. See 40 C.F.R. § 82.154(n). Cut or missing refrigerant lines on a small appliance may be an indication that class I or II refrigerants were vented to the environment. See, 58 Federal Register, 28660, (May 14, 1993).

II. Findings

7. Midwest Iron and Metal owns and operates a scrap metal recycling facility at 6760 North Industrial Road, Milwaukee, Wisconsin, 53223. Midwest Iron and Metal is a corporation organized and doing business in Wisconsin. Midwest Iron and Metal is a person as defined by 40 C.F.R. § 82.152.

8. On July 16, 2008, EPA conducted an inspection of Midwest Iron and Metal.

9. On October 2, 2008, EPA sent Midwest Iron and Metal a request for information pursuant to Section 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a). EPA requested information related to its compliance with the safe disposal requirements of 40 C.F.R. § 82.156.

10. On October 17, 2008, Midwest Iron and Metal sent in a response to EPA's request for information. It included information related to its size and finances.

11. Midwest Iron and Metal accepted small appliances without recovering refrigerant. Midwest Iron and Metal did not obtain verification statements that met the requirements of 40 C.F.R. § 82.156(f) for these small appliances. Midwest Iron and Metal is a person who takes the final step in the disposal process of small appliances and is subject to the requirements of 40 C.F.R. Part 82, Subpart F.

12. On February 25, 2009, EPA sent Midwest Iron and Metal a Finding of Violation ("FOV"). EPA informed Midwest Iron and Metal in the FOV that it was not in compliance with 40 C.F.R. § 82.156(f) because it did not recover refrigerant and did not obtain proper verification statements. EPA offered Midwest Iron and Metal an opportunity to confer with EPA on the alleged violations.

13. Midwest Iron and Metal requested an opportunity to confer with EPA via telephone. On April 1, 2009, representatives of Midwest Iron and Metal and EPA discussed via telephone the FOV; the alleged violations and potential compliance options. Midwest Iron and Metal and EPA agreed to the compliance program identified in Section III of this Order.

III. Compliance Program and Agreement

14. Midwest Iron and Metal agrees to comply with 40 C.F.R. Part 82. Additionally, Midwest Iron and Metal agrees to take the following actions and maintain compliance with paragraphs 15 through 20, below, from the Effective Date until two years thereafter, for any small appliance or MVAC that it receives at its facility.

15. Midwest Iron and Metal agrees that it will no longer accept small appliances with cut or dismantled refrigerant lines unless it implements its refrigerant verification program required by paragraph 16.

16. Midwest Iron and Metal agrees to notify its suppliers in writing that it will not accept small appliances with cut or dismantled refrigerant lines unless the suppliers can certify that the refrigerant was properly evacuated prior to cutting or dismantling the refrigerant lines. Midwest Iron and Metal will have its suppliers use the verification statement included as Attachment 1 if they claim that refrigerant was previously evacuated.

17. Midwest Iron and Metal agrees to notify its suppliers in writing that it will provide refrigerant recovery services. Midwest Iron and Metal may satisfy the notice requirements of paragraphs 16 and 17 with a sign that is prominently displayed at its weigh station during the period of time that this Order is effective.

18. Midwest Iron and Metal agrees that it will purchase and use equipment to recover refrigerant from small appliances.

19. Midwest Iron and Metal agrees that it will have the refrigerant recovered by a properly trained and certified individual. If that individual is an employee of Midwest Iron and Metal, then Midwest Iron and Metal will ensure that the individual is properly trained to use the equipment identified in paragraph 18 and has the required certifications.

20. Midwest Iron and Metal agrees to use the small appliance log included as Attachment 2. Midwest Iron and Metal will retain copies of receipts for all refrigerant it collects and sends to another company for reclamation. Midwest Iron and Metal will also

document the number of small appliances it rejects and the reason for rejecting the item(s).

21. Within 10 days of the effective date of this Order Midwest Iron and Metal agrees to provide EPA with proof of its compliance with the notice requirements of paragraphs 16 and 17. By that date Midwest Iron and Metal agrees that it will also provide EPA with proof that it purchased the equipment required by paragraph 18 and has an individual trained and certified in recovering refrigerant as required by paragraph 19.

22. By March 31, 2010, September 30, 2010, March 31, 2011, and September 30, 2011, Midwest Iron and Metal agrees to submit to EPA a copy of its small appliance log, the information required by paragraph 20 and any verification statements used pursuant to paragraph 16 above.

IV. General Provisions

23. Midwest Iron and Metal agrees that it will not contest the authority of EPA and it to enter into this agreement. It agrees to waive any further opportunity to confer or have a hearing. Midwest Iron and Metal neither admits nor denies the factual allegations made in this Order.

24. This Order does not restrict EPA's authority to enforce previous or future violations of the CAA.

25. Failure to comply with this Order may subject Midwest Iron and Metal to penalties of up to \$37,500 per day for each violation under Section 113 of the Clean Air Act, 42 U.S.C. § 7413.

26. The terms of this Order are binding on Midwest Iron and Metal, its assignees, and successors. Midwest Iron and Metal must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA that it has given the notice.

27. Midwest Iron and Metal may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If Midwest Iron and Metal fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the Clean Air Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. “Emission data” is defined at 40 C.F.R. § 2.301.

28. This order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation. To aid in our electronic record keeping efforts, please provide your response to this order without staples. Paper clips, binder clips, and 3-ring binders are acceptable.

29. EPA may use any information submitted under this Order in an administrative, civil, judicial, or criminal action.

30. This Order is effective on the date of receipt of this Order by Midwest Iron and Metal with the signature of the Director. This Order will terminate two years from

the effective date, provided that Midwest Iron and Metal has complied with all terms of the Order throughout its duration.

31. All reports required by this Order shall be sent to:

Attention: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5
77 West Jackson
Chicago, Illinois 60604

32. Midwest Iron and Metal certifies that it is complying fully with 40 C.F.R. Part 82.

33. Each person signing this Order certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

34. Each Party agrees to pay its own costs and attorneys' fees in this action.

35. This Order constitutes the entire agreement between the Parties.

AGREED AS STATED ABOVE:

MIDWEST IRON AND METAL

By: 

Date: 9/18/09

Name: Harry I. Pelman

Title: President

AGREED AND SO ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

9/22/09
Date


Cheryl D. Newton
Director

Air and Radiation Division

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent the Administrative Consent Order,
EPA Order No. EPA-5-09-113(a)-WI-04, by Certified Mail, Return Receipt Requested,
to:

Harry Pelman
Midwest Iron and Metal
6760 North Industrial Road
Milwaukee, Wisconsin 53223

I also certify that I sent a copy of the Administrative Consent Order, EPA Order No.

EPA-5-09-113(a)-WI-04, by First Class Mail to:

Daniel Schramm, Air Management Supervisor
Wisconsin Department of Natural Resources
Southeast Region
2300 North Dr Martin Luther King JR Dr
Milwaukee, Wisconsin 53212

Lance Green
Wisconsin Department of Natural Resources
101 S. Webster Street
PO Box 7921
Madison, Wisconsin 53707-7921

on the 23rd day of September 2009.

Betty Williams
Betty Williams
Administrative Program Assistant
AECAS (IL/IN)

Certified Mail Receipt Number 70010320 0005 8915 957 0